Those facts were sufficient to support a reasonable officer's belief that Latimer had authority to consent to a search of the toolbox, because it appeared that Latimer had "control" over the box "for most purposes." *United States* v. *Matlock*, 415 U.S. 164, 171 n.7 (1974) (upholding third-party consent to search, when the consenting person has "[c]ommon authority" over the place to be searched, in the sense of "joint access or control for most purposes").

Petitioner argues (Pet. 19-21) that a reasonable officer would not have concluded that Latimer's authority to consent to a search extended to the toolbox in the trunk, because Latimer denied owning the box. Ownership, however, is not essential for a person to have the authority to consent to a search. Here, a reasonable officer would have concluded that Latimer's possession and control of the car included possession and control over its containers. Accordingly, it was reasonable for the officer to rely on Latimer's apparent authority to consent to a search of the toolbox.[3]

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[3] Petitioner suggests (Pet. 21) that a reasonable officer could not have thought that Latimer had authority to consent unless he reasonably believed that Latimer "shared the use of and had joint access to [the toolbox's] contents." That is incorrect. As this Court held in *United States* v. *Matlock*, actual authority to consent to a search can flow from "joint access *or control* for most purposes." 415 U.S. at 171 n.7 (emphasis added). Latimer clearly had "control" over the toolbox by possessing it in the trunk of her rental car (along with her other personal items found in the car's trunk, see C.A. App. 74, 140). Petitioner also errs (Pet. 12-13) in relying on the statement in *Florida* v. *Jimeno*, *supra*, that "[i]t is very likely unreasonable to think that a suspect, by consenting to the search of his trunk, has agreed to the breaking open of a locked briefcase within the

Petitioner argues (Pet. 21) that, in the face of Latimer's denial of ownership, the officer was required "to inquire further before assuming that [her] consent was sufficient to search the box." While there may be situations in which "the surrounding circumstances could conceivably be such that a reasonable person would doubt" that a person's consent is sufficient, and would "not act upon it without further inquiry," *Illinois* v. *Rodriguez*, 497 U.S. at 188, both courts below concluded that further inquiry was not required in this case. When the trooper found Latimer and Womack asleep in the car, he reasonably concluded that Latimer (who was in the driver's seat) was in control of it. He reviewed Latimer's identification, engaged her in general conversation about her trip, and obtained her consent to search. During the progress of the search, Latimer did nothing to withdraw her consent or to suggest that the officer should stop. Under those circumstances, the courts below correctly concluded that Latimer had apparent authority to consent to the search of the toolbox and that the officer acted reasonably.[4]

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briefcase within the trunk." 111 S. Ct. at 1804. Here, the officer did not have to draw inferences about the scope of Latimer's consent, because Latimer explicitly consented to a search of containers. Pet. App. 4-5; C.A. App. 88. And, while Latimer denied ownership of the toolbox, she never suggested that her consent to search did not extend to it, and she did not object when the officer opened it.

[4] Petitioner suggests (Pet. 19-20) that the court of appeals erred in ruling that Latimer had actual authority to consent to the search of the toolbox. While the district court held that Latimer had actual authority and the government argued that

2. Petitioner contends (Pet. 13-21) that the decision of the court of appeals in this case conflicts with *United States* v. *Welch*, 4 F.3d 761 (9th Cir. 1993). In that case, Sharon Welch and her male companion, David McGee, had traveled in a rental car to a Las Vegas casino. When casino employees suspected that the two were passing counterfeit bills, security officers—acting at the direction of state law enforcement authorities—escorted Welch and McGee to the security office. After McGee was taken to a separate room, he consented to a search of the rental car in which he and Welch had traveled to Las Vegas. In the trunk, the officers found a woman's purse, and they searched it. After discovering Welch's driver's license and several counterfeit bills inside, they showed the purse to Welch, who identified it as hers. *Id.* at 762-763.

The court of appeals held that McGee lacked actual or apparent authority to consent to a search of Welch's purse. The court found that the government had not shown that McGee had joint use of Welch's

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issue on appeal, Gov't C.A. Br. 14-17, the court of appeals addressed only the question of apparent authority. Pet. App. 9-10. On Christopher Clarke's appeal, however, the court of appeals correctly held that Latimer did have actual authority to consent to a search of the toolbox, because "when Clarke hired Latimer to transport the toolbox to his brother, he took the risk that Latimer would consent to a search of the car and the toolbox. * * * Where the very purpose of retaining Latimer was to transport drugs in a container, Latimer plainly possessed authority to consent to a search of that container. It makes no difference that the toolbox was locked since the courier was well aware of its contents and hid the box in the wheelwell of the car." *United States* v. *Clarke*, 2 F.3d 81, 85 (4th Cir. 1993), petition for cert. pending, No. 93-6938.

purse, and he therefore lacked actual authority to consent to its search. 4 F.3d at 764. The court also found that the officers had no reasonable basis for believing that McGee had apparent authority to search what was obviously "a woman's purse." *Id.* at 763, 765. The security officers "knew that 1) [Welch] was McGee's girlfriend, 2) she had travelled with him to Las Vegas in the rental car, and 3) the handbag in the trunk of the car belonged to a woman." *Id.* at 765. Moreover, there was "no evidence that Welch was aware of McGee's actions or had any knowledge that the officers desired to conduct a search of any kind." *Ibid.* Under those circumstances, the court concluded that a reasonable officer would not have assumed that McGee was authorized to consent to a search of his girlfriend's purse, but would have made a further inquiry to determine his authority to do so. *Ibid.*

Welch is not in conflict with this case. This was not a case in which officers searched a purse or a similarly private item in reliance on the consent of a third party, while the known owner was nearby and available to be requested to consent. Rather, in this case, Trooper Wilkinson did precisely what the Ninth Circuit said the security officers in *Welch* should have done, *i.e.*, ask Latimer's companion if the toolbox belonged to him. When Womack denied ownership, it was reasonable for Wilkinson to conclude that the consent given by Latimer, the driver of the car, was effective as to the toolbox found in the trunk. There was nothing about the nature of the toolbox, which was not a container in which "a person possesses the highest expectations of privacy," *Welch*, 4 F.3d at 764,

that should have made the officer question in any way whether Latimer's consent was sufficient.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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